

**JOINT MOTION TO CONSOLIDATE FOR APPROVAL OF SETTLEMENT TERMS  
AND TO BIFURCATE FOR APPROVAL OF DISTRIBUTION**

The Petitioners in each of the above styled matters, seeking approval of wrongful death settlements, by counsel, and the Respondent, the Commonwealth of Virginia (“the Commonwealth”), by counsel, (collectively “the Parties”), jointly move this Court to consolidate each of the above styled matters for the purpose of approving the terms of the Petitioners’ settlement agreements with the Commonwealth. The Parties further jointly move this Court, upon approval of the terms of settlement with the Commonwealth, to bifurcate for further proceedings – limited to consideration of proposed distribution of proceeds – any matter in which distribution of settlement proceeds is in dispute or otherwise unresolved among statutory beneficiaries. In support of this Motion, the Parties further state as follows:

1. The Petitioners are personal representatives of the estates of students and members of the faculty at Virginia Polytechnic Institute and State University (“Virginia Tech”) who were killed on April 16, 2007 during the mass shootings perpetrated by a now deceased Virginia Tech student (“the Tragedy”) on the Virginia Tech campus.

2. The Petitioners asserted wrongful death claims against the Commonwealth pursuant to Virginia Code §§ 8.01-50, *et seq.*

3. In addition to these wrongful death claims, other victims of the tragedy have asserted personal injury claims against the Commonwealth (“the Injured Claimants”).

4. Over a period of several months, the Commonwealth, counsel representing claimants, and unrepresented claimants worked together through a process that resulted in a proposal for the global resolution of claims arising out of the Tragedy. The proposal sought to address the actual needs and other interests and concerns of all victims of the Tragedy.

5. The unprecedented nature of the Tragedy required similarly unprecedented efforts toward creativity and compromise on the part of lawyers (some of whom generously volunteered their time), mediators, officials at all levels of state government and, most importantly, the victims of the Tragedy and their families.

6. These collective efforts resulted in the presentation of the Petitions before the Court today. The Petitioners and eighteen Injured Claimants have all agreed to settle their claims against the Commonwealth on terms that are substantially the same as to each group. The Petitioners now seek this Court's approval of their wrongful death settlements. The Commonwealth has agreed to direct payments and non-monetary benefits to the Petitioners that do not vary among them in any substantial way. These provisions include, but are not limited to, medical and mental health care, establishment and administration of a Special Damages Fund and a Public Purpose Fund, payment of attorneys' fees and costs, and meetings with state and Virginia Tech officials.

7. Each Petitioner has filed a Petition for Approval of Wrongful Death Settlement to which each Petitioner has attached a copy (or will present a copy to the Court) of his or her executed Settlement Agreement and Release. As set forth in the Settlement Agreements, this Court's approval of the terms of these settlements with the Commonwealth triggers certain timelines by which the Petitioners, the Injured Claimants and/or the Commonwealth must act in order to comply with or avail themselves of the provisions of the settlement.

8. Pursuant to Va. Code § 8.01-267.3, this Court may enter an order consolidating the Petitions upon making certain findings required by Va. Code § 8.01-267.1.

9. The findings required by Va. Code § 8.01-267.1 are:

- (i) that separate civil actions brought by six or more plaintiffs involve common questions of law or fact and arise out of the same transaction or occurrence;

- (ii) that the common questions of law or fact predominate and are significant to the actions; and,
- (iii) that consolidation will promote the ends of justice and the efficient conduct and disposition of the actions; is consistent with each party's right to due process; and, does not prejudice each party's right to a fair and impartial resolution of each action.

10. Pursuant to Va. Code § 8.01-267.1, relevant factors to be considered by the Court in making the required findings include, but are not limited to:

- (i) the nature of the common questions of law or fact;
- (ii) the convenience of the parties, witnesses and counsel;
- (iii) the relative stages of the actions and the work of counsel;
- (iv) the efficient utilization of judicial facilities and personnel;
- (v) the calendar of the court;
- (vi) the likelihood and disadvantages of duplicative and inconsistent rulings, orders or judgments; and,
- (vii) the likelihood of prompt settlement of the actions without the entry of the order.

11. Virginia Code § 8.01-267.1 further provides the Court with broad discretion to organize and manage consolidated cases “to assure fair and efficient conduct and resolution of the litigation, including but not limited to orders which organize the parties into groups with like interest.”

13. In the instant matters, the Petitioners and the Commonwealth agree that each of the relevant factors and findings required by Va. Code § 8.01-267.1 weigh in favor of consolidation for the purpose of approving the terms of all the settlements, and bifurcation of any disputes or unresolved issues concerning the proposed distribution of direct payments among statutory beneficiaries.

14. All of these matters proposed for consolidation arise out of the same set of facts. They have moved through a similar, single process and the terms of these settlements are virtually identical. The terms and structure of the global settlement are the result of challenging but ultimately successful negotiations among the Petitioners, the Injured Claimants and the Commonwealth. Consolidation of these wrongful death settlements would serve the parties and the Court by allowing these matters to be concluded efficiently and promptly.

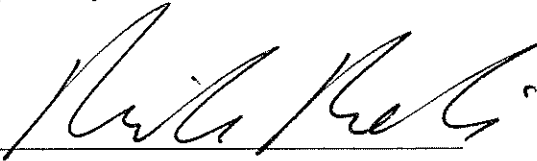
15. Consolidated approval of the terms of settlement would simultaneously trigger the Petitioners' and Injured Claimants' timelines for complying with certain terms of the settlement and/or availing themselves of the benefits of the settlement. At the same time, a bifurcated proceeding in which statutory beneficiaries may dispute the distribution of direct payments would protect the rights of such statutory beneficiaries without unduly delaying the Petitioners' and Injured Claimant's ability to conclude these settlements.<sup>1</sup> Resolution of any disputed or unresolved distribution issues is not necessary to implementation of the settlement terms, and distribution disputes, in a few cases, should not be permitted to prevent the approval of the terms of settlement in these matters. This proposal would result in a more efficient utilization of the Court's time and resources, as opposed to evaluating each petition in separate, discrete hearings.

WHEREFORE, for the foregoing reasons, the Petitioners and the Commonwealth respectfully request that this Court consolidate each of the above styled matters for the purpose of approving the terms of the Petitioners' settlement agreements with the Commonwealth and subsequently bifurcate for further proceedings any matter in which distribution of settlement proceeds is disputed or otherwise unresolved among statutory beneficiaries.

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<sup>1</sup> The Parties agree that the Commonwealth need not be a participant in any such further proceedings.

Respectfully submitted,

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